ATA
AQUA TERRA AERIS
LAW GROUP

December 13, 2016

VIA CERTIFIED MAIL – Return Receipt Requested

Frank Reilly – Vice President &
Agent for Service of Process
Fox Hills Industries, Inc.
Fox Hills Casting Industries, Inc.
5831 Research Drive
Huntington Beach, CA 92649-1349

Doug Reichard - President
One Source Casting Corporation
Fox Hills Industries, Inc.
9 Backus Street
Newark, NJ 07105

Steve Pashkutz – General Manager
Fox Hills Industries, Inc.
Fox Hills Casting Industries, Inc.
5831 Research Drive
Huntington Beach, CA 92649-1349

Re: Notice of Violation and Intent to File Suit Under the Clean Water Act

To Whom It May Concern:

I am writing on behalf of Orange County Coastkeeper ("Coastkeeper") regarding violations of the Clean Water Act[1] and California's Industrial Storm Water Permit[2] ("Storm Water Permit") occurring at the Fox Hills Industries, Inc. facility (also known as, Fox Hills Casting Industries, Inc.) located at 5831 Research Drive, Huntington Beach, CA 92649 (the "Facility" or the "Fox Hills Facility"). Upon information and belief, Fox Hills Industries, Inc. is owned and operated by One Source Casting Corporation, a Delaware Corporation. For the purpose of this Notice and Intent letter, Fox Hills Industries, Inc. and One Source Casting Corporation, will be referred to as "Fox Hills Industries."[3] The purpose of this letter is to put Fox Hills Industries, as the owners and operators of the Facility, on notice of the violations of the Storm Water Permit and the Clean Water Act occurring at the Facility, including, but not limited to, discharges of polluted storm water from the Facility into local surface waters. Violations of the Storm Water Permit are violations of the Clean Water Act. As explained below, Fox Hills Industries is liable for violations of the Storm Water Permit and the Clean Water Act.

Section 505 of the Clean Water Act allows citizens to bring suit in federal court against facilities alleged to be in violation of the Clean Water Act and/or related Permits. Section 505 of the Clean Water Act allows citizens to bring suit in federal court against facilities alleged to be in

[1] Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*
[2] National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, Order No. 97-03-DWQ, as amended by Order No. 2015-0057-DWQ.
[3] The owners and/or operators of the Facility are identified in Section I (B) below and referred to hereinafter as the "the Facility Owners and/or Operators" or "Owners and/or Operators."

water from the Facility are ongoing and continuous. Thus, the interests of Coastkeeper's members have been, are being, and will continue to be adversely affected by Fox Hills Industries' failure to comply with the Clean Water Act and the Storm Water Permit.

B. The Owners and/or Operators of the Fox Hills Facility

Information available to Coastkeeper indicates that Fox Hills Industries is owned and operated by One Source Casting Corporation, a Delaware Corporation. Fox Hills Casting Industries Inc., is an active California Corporation with California entity number C2329506 and registered agent for service of process: Frank Reilly, 5831 Research Drive, Huntington Beach, CA 92649. The registered California entity lists their entity address with the California Secretary of State as 5831 Research Drive, Huntington Beach, CA 92649.

Information available to Coastkeeper indicates that the Facility is comprised of Assessor's Parcel Number(s) ("APN"): 14545205 (5831 Research Drive, Huntington Beach, CA 92649), and is owned by Fox Hills Casting Industries, Inc. When Coastkeeper refers to owners and operators herein, those legally responsible for Fox Hills Industries are referred to collectively as the Facility "Owners and/or Operators."

The Facility Owners and/or Operators have violated and continue to violate the procedural and substantive terms of their Storm Water Permits and the Clean Water Act for the Facility, including, but not limited to, the illegal discharge of pollutants from into local surface waters. As explained herein, the Facility Owners and/or Operators are liable for violations of the Storm Water Permits and the Clean Water Act.

C. The Fox Hills Facility's Storm Water Permit Coverage

Certain classified facilities that discharge storm water associated with industrial activity are required to apply for coverage under the Storm Water Permit by submitting a Notice of Intent ("NOI") to the State Water Resources Control Board ("State Board") to obtain Storm Water Permit coverage. *See* Storm Water Permit, Finding #12. Upon information and belief, Fox Hills Industries obtained Storm Water Permit coverage for the Facility on March 18, 1992, and later obtained coverage under the 1997 Permit. On February 17, 2015 Fox Hills Industries submitted an NOI for coverage under the 2015 Permit. The Facility NOI identifies the owner/operator of the Facility as Fox Hills, with an address of 5831 Research Drive, Huntington Beach, CA 92649.

The NOI lists the Facility site size as one (1) acre, with one (1) acre of industrial area exposed to Storm Water. The Industrial Receipt letter from the State Board to Fox Hills, dated October 6, 2016, provides 8 30I000689 as the Waste Discharge Identification ("WDID") number for the Facility.

The NOI lists the Primary Standard Industrial Classification ("SIC") code for the Facility as 3369 (Nonferrous Foundries, Except Aluminum and Copper). The Storm Water Permit classifies facilities with SIC code 3369 under "Nonferrous Foundries (Castings)." *See* 1997

Plan"). The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The existing and/or potential Beneficial Uses for Bolsa Chica Channel include, at a minimum: warm freshwater habitat (WARM); and water contact recreation (REC1). The Beneficial Uses for Sunset Bay - Huntington Harbor include: navigation (NAV); water contact recreation (REC1); non-contact water recreation (REC2); commercial and sportfishing (COMM); wildlife habitat (WILD); rare, threatened or endangered species (RARE); spawning reproduction and development (SPWN); marine habitat (MAR); water contact recreation (REC1); non-contact water recreation (REC2); warm freshwater habitat (WARM); wildlife habitat (WILD); rare, threatened or endangered species (RARE); spawning reproduction and development (SPWN); and marine habitat (MAR). The Beneficial Uses for Anaheim Bay—Seal Beach National Wildlife Refuge include: water contact recreation (REC1); non-contact water recreation (REC2); preservation of biological habitats of special significance (BIOL); wildlife habitat (WILD); rare, threatened or endangered species (RARE); spawning reproduction and development (SPWN); marine habitat (MAR); and estuarine habitat (EST). The Beneficial Uses for Anaheim Bay—Outer Bay include: water contact recreation (REC1); non-contact water recreation (REC2); preservation of biological habitats of special significance (BIOL); wildlife habitat (WILD); rare, threatened or endangered species (RARE); spawning reproduction and development (SPWN); and marine habitat (MAR). *See* Basin Plan at Table 3-1.

According to the 2012 303(d) List of Impaired Water Bodies, Bolsa Chica Channel is impaired for ammonia, indicator bacteria, and pH.[4] Sunset Bay - Huntington Harbor is impaired for pathogens, copper, lead, chlordane, nickel, polychlorinated biphenyls, and sediment toxicity.[5] Anaheim Bay – Outer Bay and Anaheim Bay – Seal Beach National Wildlife Refuge are impaired for dieldrin, nickel, polychlorinated biphenyls, and sediment toxicity.[6] Polluted discharges from industrial sites, such as the Facility, contribute to the degradation of these already impaired surface waters and aquatic-dependent wildlife that depends on these waters.

II. THE FOX HILLS FACILITY AND ASSOCIATED DISCHARGES OF POLLUTANTS

A. The Fox Hills Facility Site Description and Industrial Activities

Information available to Coastkeeper indicates the Facility (APN 14545205) is located in Huntington Beach, CA 92649 near the intersection Research Drive and Product Lane, specifically at the address of 5831 Research Drive, Huntington Beach, CA 92649.

The Facility is a brass and bronze foundry that produces parts for water pumps. Onsite industrial activities include off-loading of casting ingots and supplies, solids handling,

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[4] 2012 Integrated Report – All Assessed Waters, *available at http://www.waterboards.ca.gov/water_issues/programs/tmdl/2012state_ir_reports/category5_report.shtml* (last accessed on December 7, 2016).
[5] Id.
[6] Id.

the Facility during rain events. Consequently, during rain events storm water carries pollutants from the Facility's raw and finished material, oil, and chemical storage areas, parking areas, fueling and maintenance areas, loading and unloading areas, garbage and refuse storage areas, scrap metal areas, equipment washing areas, and other areas into the municipal separate storm sewer system, which flows into the Receiving Waters, in violation of the Storm Water Permit.

Information available to Coastkeeper also indicates that O&G, ammonia, metal particulates, particulates of chemically polluted sand and dust have been and continue to be tracked from the manufacturing buildings, raw material and refuse storage areas, parking areas, and equipment maintenance and washing areas throughout the Facility. Further, numerous pollutants are believed to accumulate on the roofs of the Facility due to emissions from electric induction furnaces and other heating and air discharge equipment, resulting in polluted storm water discharges into the MS4[7] system. In addition to the roofs, these pollutants accumulate near parking, and loading and unloading areas, and the driveways leading into the Facility. As a result, trucks and vehicles leaving the Facility via the driveways are pollutant sources tracking sediment, dirt, O&G, ammonia and metal particles, and other pollutants off-site.

B. The Fox Hills Facility's Storm Water Flow and Discharge Locations

Information available to Coastkeeper indicates that storm water polluted by Fox Hills Industries' industrial operations at the Facility is discharged to Receiving Waters via at least two discharge points: the first discharge point ("Discharge Point #1") located to the south, in the center of the Facility, between the two manufacturing buildings at the front gate, prior to entering parking areas, and appears to flow out of a driveway onto Research Drive. The second discharge point ("Discharge Point #2") is located near the northwest corner of the Facility, at the rear gate and driveway, with storm water flowing onto Product Lane. A third discharge point is suspected near the southwest corner of the Facility where another driveway allows access to a Facility parking area, and out to Product Lane. Discharge Point #1 accepts much of the storm water flow from behind and between the manufacturing buildings and flows past industrial chilling areas, a welding area, various gas storage, and metal dust and debris storage, and then travels through the main driveway, exiting the Facility site; Discharge Point #2 accepts storm water flow from behind the manufacturing buildings, and flows past a series of outside storage areas and exits out the driveway at the rear gate. The third discharge point appears to take storm water overflow from the Discharge Point #1 and the western side of the parking area, and out to Product Lane. The Facility Storm Water Pollution Prevention Plan ("SWPPP") does not identify down spouts from the roofed areas of the manufacturing buildings; it is unknown which discharge points handle storm water runoff originating from roofed areas. Once storm water is discharged from the site into storm water drain inlets, it enters the storm drain system. From the MS4, storm water enters Huntington Harbor.

Information available to Coastkeeper also indicates that outdoor areas at the Facility are littered with used machinery and equipment, leaking drums and worn, stained and unused pallets,

[7] MS4 is defined as municipal separate storm sewer systems.

BMPs, although the 2015 Permit now requires operators to implement certain minimum BMPs, as well as advanced BMPs as necessary, to achieve compliance with the effluent and receiving water limitations of the 2015 Permit. In addition, the 2015 Permit requires all facility operators to sample storm water discharges more frequently than the 1997 Permit, and to compare sample and analytical results with numeric action levels ("NALs"). All facility operators are required to perform Exceedance Response Actions ("ERAs") as appropriate whenever sampling indicates NAL exceedances.

Industrial activities conducted at the Facility under SIC code 3369, and upon information and belief, SIC code 3321, requires Fox Hills Industries to obtain Storm Water Permit coverage the Facility. Both the 1997 Permit and the 2015 Permit generally require facility operators to: (1) submit a Notice of Intent ("NOI") that certifies the type of activity or activities undertaken at the facility and committing the operator to comply with the terms and conditions of the permit; (2) eliminate unauthorized non-storm water discharges; (3) develop and implement a SWPPP; (3) perform monitoring of storm water discharges and authorized non-storm water discharges; and (4) file an Annual Report that summarizes the year's industrial activities and compliance with the Storm Water Permit.

A. Discharges of Polluted Storm Water from the Fox Hills Facility in Violation of Storm Water Permit Effluent Limitations

The Storm Water Permit states that storm water discharges from facilities shall not exceed specified effluent limitations. 1997 Permit, Effluent Limitation B(1); 2015 Permit, Effluent Limitation V.B. Compliance with the effluent limitation guidelines constitutes compliance with best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT") for the specified pollutants and must be met to comply with the Storm Water Permit. 1997 Permit, Fact Sheet at VIII; 2015 Permit, Fact Sheet at pp. 15-17.

Certain activities undertaken at the Facility pose significant risks to water quality, including outdoor storage of raw and finished materials, chemical and oil drums, old unused machinery, and metal shavings and dust and other scrap metal. The Facility 2015 SWPPP indicates in the List of Industrial Materials that materials present the Facility include, raw metals including brass and zinc, oils and lubricants, baghouse dust, castings, raw sand, furan and pepset.

Because manufacturing facilities using metals are likely to discharge storm water runoff that is contaminated, the EPA provides a storm water fact sheet for Primary Metals Facilities. *See* Environmental Protection Agency, *Sector F: Primary Metals Facilities* (EPA-833-F-06-021) December 2006 ("Sector F Fact Sheet").[9] The fact sheet offers facility operators guidance on how to prepare storm water management programs that are appropriate for their facility and operations. Table 1 of the Sector F Fact Sheet sets forth the EPA chart regarding the various pollutant sources and pollutants that are typically associated with facilities such as the Fox Hills

[9] Available at: https://www3.epa.gov/npdes/pubs/sector_f_primarymetals.pdf (last accessed on December 7, 2016)

Storm water sampling at the Facility demonstrates that storm water discharges contain concentrations of pollutants above the applicable Effluent Limits. For example, based upon a hardness value of 75-100 mg/L for the receiving waters, the effluent limitation based upon BPT and BAT for Cu is .0123 mg/L. *See* 2015 Permit, Appendix J, "Calculating Hardness in Receiving Waters for Hardness Dependent Metals."[12] Self-reported testing submitted to the Regional Water Quality Control Board (RWQCB) showed exceedances of the EPA Benchmark for Cu, among others, by magnitudes of 520.33, 292.68, and 284.55 at the Facility. *See* Exhibit A.

Information available to Coastkeeper indicates that the Facility Owners and/or Operators violate the Storm Water Permit by discharging storm water containing pollutants in excess of, or outside the range of, the applicable effluent limitations each time Fox Hills Industries discharges storm water from the Facility. *See, e.g.*, Exhibit B. These discharge violations are ongoing and will continue every day the Owners and/or Operators discharge storm water from the Facility that contains concentrations of pollutants in excess of, or outside the range of, the applicable effluent limitations. Coastkeeper will include additional violations as information and data become available. Further, given that the Owners and/or Operators effluent limitation violations are ongoing, and recent test results indeed evidence additional effluent violations, Coastkeeper also puts the Facility Owners and/or Operators on notice that Effluent Limitation V.B. of the 2015 Permit is violated each time storm water is discharged from the Facility after July 1, 2015. Each time the Facility Owners and/or Operators discharge polluted storm water in violation of Effluent Limitation B(3) of the Storm Water Permit and Effluent Limitation V.B. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since December 13, 2011.

C. Discharges of Polluted Storm Water from the Fox Hills Facility in Violation of BAT/BCT

The Storm Water Permit and Clean Water Act require dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve BAT for toxic[13] and non-conventional pollutants and BCT for conventional pollutants.[14] 33 U.S.C. §§ 1311 (b)(2)(A) and (b)(2)(E); 1997 Permit, Effluent Limitation B(3); 2015 Permit, Effluent Limitation V.A. The Federal Effluent Limitations define application of BAT for TSS and pH as numeric effluent limitations. A discharge of storm water which exceeds the Federal Effluent Limitations is a failure to achieve BAT/BCT. Further, EPA Benchmarks are relevant and objective standards for evaluating whether a permittee's BMPs achieve compliance with BAT/BCT standards. [15]

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[12] *Available at: https://www.epa.gov/sites/production/files/2015-10/documents/msgp2015_appendixj.pdf*

[13] Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

[14] Conventional pollutants are listed at 40 C.F.R. § 401.16 and include biochemical oxygen demand, TSS, oil and grease, pH, and fecal coliform.

[15] *See United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP)*

D. Discharges of Polluted Storm Water from the Fox Hills Facility in Violation of Receiving Water Limitations

The Storm Water Permit and the CWA prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable Water Quality Standard ("WQS").[16] 33 U.S.C. § 1311 (b)(l)(C); 40 C.F.R. §§ 122.4(d), 122.4(i), 122.44(d); 2015 Permit, Receiving Water Limitation VI.A; 1997 Permit, Receiving Water Limitation C(2). Discharges that contain pollutants in excess of an applicable WQS violate these requirements.

The Storm Water Permit also prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment. 1997 Permit, Receiving Water Limitation C(1); 2015 Permit, Receiving Water Limitation VI.B. Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment constitute violations of Receiving Water Limitation C(1) of the 1997 Permit, Receiving Water Limitation VI.B. of the 2015 Permit, and the Clean Water Act.

Storm water sampling at the Facility demonstrates discharges contain concentrations of pollutants that cause or contribute to a violation of an applicable WQS. For example, the pH Basin Plain criteria range is between 6.5-8.5 s.u. for inland surface waters such as Bolsa Chica Channel, and 7-8.6 s.u. for estuary and bay water bodies, such as Anaheim Bay. The Facility's December 2014 storm water samples measured 2.67 s.u. and 3.78 s.u., between one thousand and ten thousand times the Basin Plan criteria for pH. These exceedances of WQS demonstrate that Fox Hills Industries has violated and continues to violate Receiving Water Limitation C(2) of the 1997 Permit, and Receiving Water Limitation VI.A. of the 2015 Permit.

As explained herein, the Receiving Waters are impaired, and thus unable to support the designated beneficial uses, and will likely become further impaired with pollutants discharging from the Facility. The 2010 303(d) List of Impaired Water Bodies lists Huntington Harbor, Anaheim Bay and the Bolsa Chica Channel as impaired for multiple pollutants, including pH, copper, lead, ammonia and nickel. Information available to Coastkeeper indicates that the Facility's storm water discharges contain elevated concentrations of pollutants, such as copper and pH, which can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in Huntington Harbor, Anaheim Bay, and Bolsa Chica Channel. *See* Exhibit A. Discharges of elevated concentrations of pollutants in the storm water from the Facility also adversely impact human health. These harmful discharges from the Facility are violations of

[16] The Basin Plan designates Beneficial Uses for the Receiving Waters. Water quality standards are pollutant concentration levels determined by the state or federal agencies to be protective of designated Beneficial Uses. Discharges above water quality standards contribute to impairment of Receiving Waters' Beneficial Uses. Applicable water quality standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 ("CTR"), and water quality objectives in the Basin Plan.

permit coverage. Each time the Facility Owners and/or Operators discharge prohibited non-storm water in violation of Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III.B. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since December 13, 2011.

F. Failure to Develop, Implement, and/or Revise an Adequate Storm Water Pollution Prevention Plan

The Storm Water Permit requires dischargers to have developed and implemented a SWPPP by October 1, 1992, or prior to beginning industrial activities, that meets all of the requirements of the Storm Water Permit. The objectives of the SWPPP requirement are to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges from the Facility, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. These BMPs must achieve compliance with the Storm Water Permit's Effluent Limitations and Receiving Water Limitations. To ensure compliance with the Storm Water Permit, the SWPPP must be evaluated on an annual basis, and must be revised as necessary to ensure compliance with the Storm Water Permit. *See* 1997 Permit, Sections A(1)-A(10) and Provision E(2); 2015 Permit, Sections X.A.-C.

Among other requirements, the SWPPP must include: a site map showing the Facility boundaries, storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, areas of actual and potential pollutant contact, areas of industrial activity, and other features of the Facility and its industrial activities; a list of significant materials handled and stored at the site; a description of potential pollutant sources, including industrial processes, material handling and storage areas, dust and particulate generating activities, significant spills and leaks, non-storm water discharges and their sources, and locations where soil erosion may occur; and an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective. 1997 Permit Sections A(3)-A(10); 2015 Permit, Section X.D.-H.

Information available to Coastkeeper indicates that the Facility Owners and/or Operators have been and continue to conduct operations at the Facility with an inadequately developed and/or implemented SWPPP. For example, descriptions of BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective, is inadequate and incomplete, and does not address Cu or Zn, notwithstanding the Facility's history of noncompliance regarding those metals. The Owners and/or Operators have failed to properly revise the Facility's SWPPP to ensure compliance with the Storm Water Permit. The Facility's current SWPPP is recent, dated June 2015, yet despite the significant concentrations of

Event ("QSE") at the Facility in the 2011-2012, 2012-2013, 2013-2014 and 2014-2015 reporting years[18], and as a result under reported for those years, in violation of Section B(5) of the Storm Water Permit. Further, the one QSE sampled in the 2013-2014 reporting year was not tested for copper, zinc, or lead, a constituent that the Facility was testing for at that time – the Facility reported an exceedance of lead in February of 2013. *See* Exhibit A.

Additionally, the Facility Owners and/or Operators failed to provide adequate records, as required by Section B(4) of the 1997 Permit, for the monthly visual observations of storm water discharges. The 1997 Permit further requires dischargers to document the presence of any floating and suspended material, O&G, discolorations, turbidity, odor and the source of any pollutants. Storm Water Permit, Section B(4)(c). Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges. *Id.* By reporting a lack of QSE at the Facility, the Owners and/or Operators also violated Section B(5) of the 1997 Permit.

Based on information available to Coastkeeper, the Facility Owners and/or Operators consistently failed to properly collect samples from QSE, and conduct and/or document the required observations of storm water discharges within the first hour of discharge, from all discharge locations, and/or from one qualifying storm event per month. Information available to Coastkeeper indicates that there were approximately 17 storm events in the 2011-2012 reporting year, 14 storm events in the 2012-2013 reporting year, 11 storm events in the 2013-2014 reporting year, and 13 storm events in the 2014-2015 reporting year, where in excess of .1 inch of rainfall was measured at Los Alamitos Army Air Field, in close proximity to the Facility. *See* Exhibit B.

As noted above, the Facility Owners and/or Operators failed to collect and analyze storm water samples as required by the 1997 Permit. The 1997 Permit requires permittees to collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. 1997 Permit, Section B(5)(a). All discharge locations must be sampled. *Id.* Sample collection is only required of storm water discharges that occur during scheduled Facility operating hours and that are preceded by at least three working days without storm water discharge. 1997 Permit, Section B(5)(b).

The Facility Owners' and/or Operators' failure to conduct sampling and monitoring as required by the Storm Water Permit demonstrates that it has failed to develop, implement, and/or revise an M&RP that complies with the requirements of Section B and Provision E(3) of the 1997 Permit and Section XI of the 2015 Permit. Every day that the Facility Owners and/or Operators conduct operations in violation of the specific monitoring requirements of the 1997 Permit or the 2015 Permit, or with an inadequately developed and/or implemented M&RP, is a separate and distinct violation of the 1997 Permit or the 2015 Permit, and the Clean Water Act. The Facility Owners and/or Operators has been in daily and continuous violation of the Storm Water Permit's M&RP requirements every day since at least December 13, 2011. These

[18] A reporting year encompasses a full calendar year from July 1, through June 30 of the following year.

required by Receiving Water Limitations C(3) and C(4) of the 1997 Permit. As such, the Owners and/or Operators are in daily violation of this requirement of the Storm Water Permit.

Information available to Coastkeeper indicates that the Facility Owners and/or Operators have submitted incomplete and/or incorrect Annual Reports that fail to comply with the Storm Water Permit. As such, the Owners and/or Operators are in daily violation of the Storm Water Permit. Every day the Facility Owners and/or Operators conduct operations at the Facility without reporting as required by the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least December 13, 2011. These violations are ongoing, and Coastkeeper will include additional violations when information becomes available, including specifically violations of the 2015 Permit reporting requirements (*see* 2015 Permit, Section XVI.). The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since December 13, 2011.

IV. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of up to $37,500 per day per violation for all Clean Water Act violations after December 13, 2011. In addition to civil penalties, Coastkeeper will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), Coastkeeper will seek to recover its costs, including attorneys' and experts' fees, associated with this enforcement action.

V. CONCLUSION

Coastkeeper is willing to discuss effective remedies for the violations described in this Notice Letter. However, upon expiration of the 60-day notice period, Coastkeeper will file a citizen suit under Section 505(a) of the Clean Water Act for Fox Hills Industries' violations of the Storm Water Permit.

ATA
AQUA TERRA AERIS
LAW GROUP

SERVICE LIST

VIA U.S. CERTIFIED MAIL – Return Receipt Requested

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2. Sampling Conducted by Orange County Coastkeeper Demonstrating Non-Compliance with BAT/BCT

Date of Sample	Discharge Point	Constituent	EPA Benchmark Limit (mg/L)	Sample Value (mg/L)	Magnitude of Exceedance
11.20.2016	Back Yard	N+N	1.2	0.68	1.76
11.20.2016	Back Yard	Aluminum	0.75	1.2	1.6
11.20.2016	Back Yard	Copper	0.0123	2.9	235.77
11.20.2016	Back Yard	Zinc	0.117	0.69	5.9
11.20.2016	Back Yard	Iron	1.0	3.8	3.8
11.20.2016	Back Yard	Lead	0.069	0.2	2.9

3. Sampling Conducted by Fox Hills Industries, Inc. Demonstrating Noncompliance with Water Quality Standards in the Santa Ana Basin Plan

Date of Sample	Discharge Point	Constituent[1]	Santa Ana Basin Plan Standard (s.u.)	Sample Value
12.19.2013	Back Yard	pH	7.0-8.6 6.5-8.5	6.51
12.19.2013	Parking Lot	pH	7.0-8.6 6.5-8.5	6.49
12.02.2014	Back Yard	pH	7.0-8.6 6.5-8.5	2.67
12.02.2014	Parking Lot	pH	7.0-8.6 6.5-8.5	3.78
09.15.2015	Parking Lot	pH	7.0-8.6 6.5-8.5	6.62

[1] There are two applicable Basin Plan Values for pH differing from the EPA Benchmark, related to the Fox Hills Facility: for bays and estuary waters, pH—7.0-8.6 s.u; for inland surface waters, pH —6.5 8.5 s.u.

Date	Precipitation (Inches)
1.11.15	.59
2.22.15	.37
3.2.15	.27
3.7.15	.19
5.8.15	.32
5.14.15	.44
5.15.15	.32
7.18.15	.17
7.19.15	.23
9.15.15	1.64
10.4.15	.17
12.19.15	.16
12.22.15	.43
1.5.16	.87
1.6.16	.82
1.7.16	.48
1.31.16	.23
2.17.16	.34
3.6.16	.31
3.7.16	.32
3.11.16	.32
4.10.16	.11
5.6.16	.11
10.17.16	.26
TOTAL	66 Days